IN THE

Supreme Court of the United States

No. 71-249

THOMAS JUSTIN ORR, *Petitioner,*

v.

RAYMOND E. TRINTER, et al., *Respondents.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR REHEARING OF ORDER DENYING CERTIORARI

Petitioner respectfully requests that this Court grant rehearing of its order dated June 29, 1972, which denied certiorari, and that the Court now grant certiorari and summarily remand for further proceedings consistent with the opinions in *Board of Regents* v. *Roth,* No. 71-162 (decided June 29, 1972), and *Perry* v. *Sindermann,* No. 70-36 (decided July 29, 1972).

The complaint in this action alleged that petitioner, a high school teacher, was denied renewal in retaliation for his exercise of First Amendment rights and without procedural due process. The district court, without ruling upon the First Amendment claim, held that petitioner was denied procedural due process, reasoning that *all* non-tenured public school teachers are entitled to notice and hearing prior to

non-renewal. The Court of Appeals reversed, reasoning that *no* non-tenured public school teachers are entitled to notice and hearing prior to non-renewal. Apparently unaware that there remained a First Amendment claim to be tried (Pet. 27), the Court of Appeals "remanded with instructions to dismiss the complaint" (Pet. 29). A petition for certiorari was filed from the procedural due process ruling and was held in abeyance pending this Court's decisions in *Roth* and *Sindermann*. On June 29, 1972, *Roth* and *Sindermann* were decided on the merits, and the petition in the instant case was denied. For the reasons set forth below we submit that the more appropriate disposition of the instant case is a remand for further proceedings consistent with the opinions in *Roth* and *Sindermann*.

Roth and *Sindermann* rejected both of the extremes enunciated by the courts below. This Court declared that *some* non-tenured teachers—those who can demonstrate that their non-renewal deprived them of "liberty" or "property"—are entitled to pre-termination notice and hearing. The Court explained at some length the considerations relevant to determining whether a protectible "liberty" or "property" interest exists.

In *Roth*, the Court noted that liberty would be implicated, and a hearing required, if non-renewal "imposed on [the teacher] a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities." (slip opin., p. 9). The record of the instant case reflects that another school district in Ohio which deemed petitioner qualified "felt required not to hire [him] in light of the situation in Columbus, Ohio"; that petitioner could not utilize the Placement service of the Ohio State University College of Education because of his non-renewal; and that his other efforts to obtain a teaching job were unavailing (Pet. 4). This evidence (which could be expanded still further upon remand to include petitioner's subsequent experiences) has never been evaluated in light of the *Roth*

standards. Petitioner is entitled to a remand for such evaluation.

In both *Roth* and *Sindermann* this Court held that teachers may not be denied renewal in retaliation for the exercise of their First Amendment rights. Both cases were remanded for a trial of the First Amendment claims. The instant case, too, involves a First Amendment claim but the court below, overlooking this fact, remanded with instructions that the complaint be dismissed. This Court should remand for further consideration of the First Amendment claim.[1]

CONCLUSION

For the reasons set forth in this petition, rehearing and certiorari should now be granted and the case should be summarily remanded for further proceedings consistent with the opinions in *Board of Regents* v. *Roth*, No. 71-162, and *Perry* v. *Sindermann*, No. 70-36.

Respectfully submitted,

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[1] Petitioner contends that he was denied renewal because he assigned the novel *Last Summer*, by Evan Hunter, to his high school English class. If he can prove that this was the motivation for his non-renewal, a number of lower court decisions support his contention that the non-renewal was unconstitutional. *Keefe* v. *Geanakos*, 418 F.2d 359 (1st Cir. 1969); *Mailloux* v. *Kiley*, 323 F. Supp. 1387 (D. Mass. 1971), affirmed 448 F.2d 1242 (1st Cir. 1971); *Parducci* v. *Rutland*, 316 F.Supp. 352 (M.D. Ala. 1970); *Webb* v. *Lake Mills Community School District*, Civil No. 71-C-2053-C (N.D. Iowa, May 26, 1972); *Sterzing* v. *Fort Bend Independent School District*, Civil No. 69-H-319 (S.D. Tex., May 5, 1972).

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CERTIFICATE OF COUNSEL

Pursuant to Rule 58, I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay, and is restricted to the grounds specified in Paragraph 2 of Rule 58.

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